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NATIONSTAR MORTGAGE LLC (erroneously sued as "Nationstar Mortgage")

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA-SAN FRANCISCO DIVISION

ANNA ZBITNOFF,
Plaintiff,
vs.
NATIONSTAR MORTGAGE,
Defendant.

)) MANAGEMENT STATEMENT &
) [PROPOSED] ORDER
)
) Date: March 13, 2014
) Time: 8:00 a.m.
) Ctrm: 8
)
)

Defendant NATIONSTAR MORTGAGE LLC (“Nationstar”) submits the following UNILATERAL CASE MANAGEMENT STATEMENT & PROPOSED ORDER pursuant to the Standing Order for All Judges of the Northern District of California dated July 1, 2011 and Civil Local Rule 16-9. Nationstar’s counsel sought the cooperation from Plaintiff ANNA ZBITNOFF (“Plaintiff”) in the filing of a joint statement but was unsuccessful which necessitated the filing of this Unilateral Statement. Nationstar’s counsel will continue to seek the cooperation from Plaintiff in the filing of a joint statement prior to the Case Management

1 Conference. This Unilateral Statement is being provided without Plaintiff's input but does
2 incorporate statements from the prior joint statement submitted by the parties.

3 **1. Jurisdiction & Service**

4 This Court has subject matter jurisdiction over Plaintiff's claims due to Diversity of
5 Citizenship between the parties. Defendant Nationstar Mortgage LLC ("Nationstar" or
6 "Defendant") removed this case from state court based on Diversity of Citizenship. There are no
7 issues that exist as to persona jurisdiction or venue. No other parties remain to be served.
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10 **2. Facts**

11 Plaintiff Anna Zbitnoff ("Plaintiff") is the current owner of real property located at 502
12 North Pine Street, Ukiah, CA 95482 (the "Property"). On or about August 22, 2005, obtained a
13 refinance loan in the amount of \$490,100.00 with lender Lehman Brothers Bank, FSB. The loan
14 was secured by a Note and first position Deed of Trust. Defendant Nationstar is the current
15 holder of the Note. A non-judicial foreclosure is currently pending against the Property by
16 Nationstar. A Notice of Default was recorded on June 17, 2013 indicating Plaintiff was in
17 default on her loan in the amount of \$30,123.34. The foreclosure sale of the Property is
18 currently scheduled to proceed on April 2, 2014.
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21 Plaintiff alleges in her proposed First Amended Complaint that Nationstar committed a
22 fraud against Plaintiff with respect to Plaintiff's loan and pending non-judicial foreclosure of
23 real property owned by Plaintiff. Nationstar disputes these allegations and currently is not aware
24 of the actual factual details to support these allegations.
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1 **3. Legal Issues**

2 Plaintiff's proposed First Amended Complaint alleges ten causes of action. It is unclear at this
3 time whether the parties dispute the law as to these ten causes of action. The legal issues
4 currently before the Court are undecided since there is no pending complaint, only a proposed
5 First Amended Complaint. The original complaint was dismissed by the Court upon
6 Nationstar's 12(b)(6) motion.

7

8 **4. Motions**

9 Plaintiff's Motion for Leave to File an Amended Complaint ("Motion") is currently scheduled
10 to be heard on March 13, 2014, concurrent with the Case Management Conference. The hearing
11 on the Motion and the Case Management Conference will likely be continued one-week to
12 March 20, 2014 based upon the Court's February 28, 2014 Order. [Doc. 39] This is because
13 Nationstar intends to file an Opposition by March 7, 2014 to Plaintiff's Motion as directed by
14 the Court. Nationstar anticipates filing a Motion to Dismiss any amended Complaint. If any
15 cause of action survives Nationstar's anticipated FRCP 12(b)(6) Motion to Dismiss, Nationstar
16 anticipates filing a Motion for Summary Judgment, or in the alternative, Motion for Summary
17 Adjudication.

18

19 **5. Amendment of Pleadings**

20 Plaintiff's motion for leave to file the proposed First Amended Complaint is scheduled to be
21 heard on March 13, 2014. There are no parties, claims, or defenses expected to be added or
22 dismissed at this time. Nationstar proposes a deadline of March 20, 2014 to amend the
23 pleadings.

1
2 **6. Evidence Preservation**

3 The parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored
4 Information (“ESI Guidelines”), and the parties have not yet met and conferred pursuant to Fed.
5 R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence
6 relevant to the issues reasonably evident in this action.

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8 **7. Disclosures**

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10 There has not been a full and timely compliance with the initial disclosure requirements of Fed.
11 R. Civ. P. 26. Nationstar anticipates having all Rule 26 disclosures completed by April 25,
12 2014.

13
14 **8. Discovery**

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16 There has been no discovery taken to date. Defendant Nationstar anticipates propounding
17 written discovery and taking the deposition of Plaintiff. Nationstar does not propose any
18 limitations or modifications of the discovery rules at this time. The parties have not considered
19 entering into a stipulated e-discovery order. The parties have not prepared a proposed discovery
20 plan pursuant Fed. R. Civ. P. 26(f). There are no known discovery disputes at this time.

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22 **9. Class Actions**

23
24 Not applicable.

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26 **10. Related Cases**

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28 None.

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2 **11. Relief**

3 Plaintiff previously identified her damages in this action as follows:

4 Plaintiff reserves the right to re-calculate damages as reasonably possible upon
5 discovery of such information to modify the damages claimed. Plaintiff originally arrived upon
6 damages as follows and based on what has been paid on the note. \$186,441.00:
7

8 Compensatory damage: \$186,441.00 x 4 = \$745,764.00

9 Punitive Damages: \$745,764.00 x 200 = \$149,152,800.00

10 Unfair and Deceptive Trade Practices: \$149,152,800.00 x 3 = \$447,458,400.00

11 Plaintiff had originally included up to the punitive damages due to not seeing the section for
12 unfair and deceptive trade practices.
13

14
15 **12. Settlement and ADR**

16 It is unclear what the prospects for settlement are at this time due to the uncertainty of the
17 allegations and status of the pleadings. This case has not been assigned to the ADR Multi-
18 Option Program. Nationstar does not wish at this time for the case to be assigned to the ADR
19 Multi-Option Program. There has been no ADR efforts to date. Nationstar agrees to try and
20 settle the case without any formal ADR with the Court. If a formal ADR is needed the parties
21 will request a formal ADR from the Court.
22

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24 **13. Consent to Magistrate Judge For All Purposes**

25 Whether all parties will consent to have a magistrate judge conduct all further proceedings
26 including trial and entry of judgment. ____ YES X NO
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1
2 **14. Other References**

3 This case is not suitable for reference to binding arbitration, a special master, or the Judicial
4 Panel on Multidistrict Litigation.
5
6

7 **15. Narrowing of Issues**
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10 It is too early at this time to know whether any issues can be narrowed. Nationstar will attempt
11 to narrow all issues to the extent possible after the pleadings are settled. There is no request at
12 this time to bifurcate issues, claims, or defenses.
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15 **16. Expedited Trial Procedure**
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18 Nationstar does not request this case be handled under the Expedited Trial Procedure of General
19 Order 64, Attachment A.
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22 **17. Scheduling**
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25 Nationstar proposes the following dates for designation of experts, discovery cut-off, hearing of
26 dispositive motions, pretrial conference and trial:
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Initial Expert witness disclosures: July 11, 2014

Supplemental disclosure and disclosure of rebuttal experts: July 30, 2014

Discovery cut-off: August 30, 2014

Final hearing date for dispositive motions: Thursday, October 30, 2014 at 8:00 a.m.

Pre-trial conference: Monday, January 26, 2015 at 2:00 p.m.

Trial: March 3, 2015

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2 **18. Trial**

3 Plaintiff is requesting a jury trial in her proposed First Amended Complaint. Defendant
4 Nationstar does not at this time anticipate requesting a jury trial. The trial would likely last 2-3
5 days.
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8 **19. Disclosure of Non-party Interested Entities or Persons**

9 Plaintiff has not filed a Certification of Interested Entities or Persons.

10 Defendant Nationstar has filed a Certification of Interested Entities or Persons. Nationstar
11 restates the contents of its certification as follows:

- 12 1. Plaintiff ANNA ZBITNOFF;
13
14 2. Defendant NATIONSTAR MORTGAGE LLC (erroneously named as “Nationstar
15 Mortgage”). Nationstar Mortgage LLC is a Delaware limited liability company. Its
16 members are Nationstar Sub1 LLC (with 99% ownership) and Nationstar Sub2 LLC
17 (with 1% ownership). Nationstar Sub1 LLC and Nationstar Sub2 LLC are owned by
18 Nationstar Mortgage Holdings, Inc., a Delaware corporation. Nationstar Mortgage
19 Holdings, Inc. is publicly traded on the New York Stock Exchange under ticker
20 symbol “NSM”. No publicly held corporation owns ten (10%) or more of Nationstar
21 Mortgage Holdings, Inc.’s stock.
22
23

24 **20. Other**

25 N/A
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1 Dated: March 6, 2014

AMSL LEGAL GROUP, LLP

2 By: /s/ Chris C. Chapman
3 Chris C. Chapman
4 Attorneys for Defendant,
NATIONSTAR MORTGAGE LLC

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13 **CASE MANAGEMENT ORDER**

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The above UNILATERAL CASE MANAGEMENT STATEMENT & PROPOSED ORDER is
approved as the Case Management Order for this case and all parties shall comply with its
provisions.

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19 IT IS SO ORDERED.

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21 Dated:

22

23 HON. WILLIAM ALSUP

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